IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15396 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHAPURI COOPERATIVE CREDIT SOCIETY LTD.

Versus

STATE OF GUJARAT, THRO' DY. SECRETARY (APPEALS)

Appearance:

1. Special Civil Application No. 15396 of 2003

MR SHIRISH JOSHI for Petitioner No. 1-2

MR DIPEN DESAI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/09/2004

ORAL JUDGEMENT

#. In this petition filed under Article 227 of the Constitution of India, the petitioners have challenged

the legality and validity of the order passed by the revisional authority, i.e. State Government dated 17.10.2003 in dismissing the revision application and confirming the order passed by the Joint Registrar, Cooperative Societies dated 16.8.2003 passed under Section 84(6) of the Gujarat Cooperative Societies Act, 1961 ("the Act" for short).

#. It appears that having satisfied with regard to re-audit on the basis of the complaints received by him, the Joint Registrar, Cooperative Societies, passed the order under sub-section (6) of Section 84 of the Act and passed the order with regard to re-audit of the petitioner society for the years 2000-2001 and 2001-2002. The said order came to be challenged by the petitioner society before the revisional authority. The revisional authority, i.e. Deputy Secretary (Appeal), Agriculture and Cooperation Department by his order dated 17.10.2003 dismissed the said revision application and hence the present special civil application.

#. Mr.Shirish Joshi, learned advocate appearing on behalf of the petitioners, has submitted that on the basis of the complaints made by those persons who are defaulters, the Joint Registrar could not have passed the order under sub-section (6) of Section 84 of the Act and that there is no specific finding even by the Joint Registrar which is contemplated under Section 84(6) of the Act and that the order with regard to re-audit is not mere formality, but the Joint Registrar is required to be satisfied and thereafter the order with regard to re-audit can be passed. He further submitted that before passing the order under Section 84(6) of the Act, the petitioner society is not given opportunity of hearing and, therefore, the order is bad in law.

#. On the other-hand, Mr.Dipen Desai, learned AGP has supported the orders passed by the Joint Registrar as well as the revisional authority. He submitted that having satisfied to see that truth may come out, the Joint Registrar has passed the order for re-audit under Section 84(6) of the Act and that by passing the order with regard to re-audit, there is no prejudice to the petitioner society.

#. Heard the learned advocates for the respective parties.

#. Sub-section (6) of Section 84 of the Act reads as under.:

"If it appears to the Registrar, on an application by a society or otherwise, that it is necessary or expedient to re-audit any accounts of the society, the Registrar may by order provide for such re-audit and the provision of this Act applicable to audit of accounts of the society shall apply to such re-audit."

There is no requirement of law giving an opportunity of hearing before passing the order of re-audit. The hearing is required to be given when a person or the authority is likely to be affected or prejudiced by re-audit only. In the present case, there is no prejudice to the petitioner society. At the time of re-audit, an ample opportunity will be given by the Auditor and when there is no requirement of hearing before passing the order under sub-section (6) of Section 84 of the Act, the contention on behalf of the petitioners with regard to not giving opportunity of hearing before passing the order with regard to re-audit cannot be accepted and the same is required to be rejected.

#. So far as the orders passed by both the authorities below are concerned, on the basis of the complaints received by the same persons who might be the defaulters or against whom the complaints are filed, if the order is passed by the Joint Registrar with regard to re-audit and if he is satisfied that to find out and to know real truth, re-audit is required, it cannot be said that there is any illegality committed by the authority below. According to me, by mere passing the order of re-audit, there is no prejudice which is likely to be caused to the petitioner society, more particularly, when the expenses of re-audit is required to be borne by the members who had made the complaint.

#. In view of the aforesaid facts and circumstances, there is no substance in this petition and is required to be rejected. This petition is rejected accordingly. Rule is discharged. No costs. Interim relief granted earlier stands vacated forthwith.

(M.R.Shah,J)

(pathan)